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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|-----------------|-------------|----------------------|----------------------|------------------|
| 09/852,420      | 05/10/2001  | Garby Cadet          | Cadet 18-B (1525-00) | 4978             |

7590 12/24/2002

IP Department  
Schnader Harrison Segal & Lewis LLP  
Suite 3600  
1600 Market Street  
Philadelphia, PA 19103

EXAMINER

DERRINGTON, JAMES H

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1731     |              |

DATE MAILED: 12/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

|                  |              |
|------------------|--------------|
| Application No.  | Applicant(s) |
| 09/852,420       | CADET ET AL. |
| Examiner         | Art Unit     |
| James Derrington | 1731         |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM

#### THE MAILING DATE OF THIS COMMUNICATION.

- Extension of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- Responsive to communication(s) filed on \_\_\_\_.
- This action is FINAL.  This action is non-final.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- Claim(s) 1-22 is/are pending in the application.
- Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- Claim(s) \_\_\_\_ is/are allowed.
- Claim(s) \_\_\_\_ is/are rejected.
- Claim(s) \_\_\_\_ is/are objected to.
- Claim(s) 1-22 are subject to restriction and/or election requirement.

### Application Papers

- The specification is objected to by the Examiner.
- The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - All
  - Some \*
  - None of:
    - Certified copies of the priority documents have been received.
    - Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    - Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - The translation of the foreign language provisional application has been received.
- Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- Notice of References Cited (PTO-892)
- Notice of Draftsperson's Patent Drawing Review (PTO-948)
- Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- Notice of Informal Patent Application (PTO-152)
- Other: \_\_\_\_.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-2 and 22, drawn to a process, classified in class 65, subclass 29.12.
- II. Claims 13-21, drawn to an apparatus, classified in class 65, subclass 160.

The inventions are distinct, each from the other because of the following reasons:

Inventions Group I and Group II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus of Group II can be used in a materially different process such as monitoring cracks in metal objects.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

In addition, this application contains claims directed to the following patentably distinct species of the claimed invention: A) monitoring electromagnetic energy (device and method) and B) monitoring acoustic energy (device and method)

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-3, 13-15 and 22 appear to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims

readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Derrington whose telephone number is 703 308-3832. The examiner can normally be reached on 8:30am - 5pm.

Application/Control Number: 09/852,420  
Art Unit: 1731

Page 4

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 703 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7718 for regular communications and 703 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0661.

jd  
December 20, 2002

  
JAMES DERRINGTON  
PRIMARY EXAMINER  
ART UNIT 1731